United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-1381

In the

UNITED STATES COURT OF APPEALS
For the Second Circuit

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Docket No. 76-1381

UNITED STATES OF AMERICA,
Plaintiff-Appellee

vs.

DANIEL H. GEORGE, JR.
Defendant-Appellant

On Appeal From The United States District Court
For The District of Vermont At Criminal
Action No. 76-2

BRIEF FOR APPELLANT, DANIEL H. GEORGE, JR.

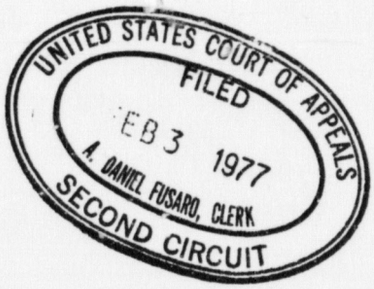

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TABLE OF CONTENTS

TABLE OF CASES CITED

TABLE OF AUTHORITIES CITED

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PRELIMINARY STATEMENT

This is an appeal by Daniel H. George, Jr., Defendant, who was tried by jury in the United States District Court, District of Vermont, before the Honorable Albert W. Coffrin, presiding, and found guilty on five counts of distributing and possessing with the intent to distribute amphetamine, a controlled substance, in violation of

Section 841, Title 21 and Section 2, Title 18, U.S.C. and was further found guilty of one count of conspiracy to violate Sections 812, 841, Title 21 of the United States Code in violation of Section 846, Title 21, United States Code.

ISSUES PRESENTED

1. Should the judgment of the District Court be reversed and judgment entered for the Defendant in that the District Court erred in denying the Defendant's Motion for Judgment of Acquittal, made at the close of the Government's case and renewed at the close of all the evidence.

2. In that regard:

a) Should the "seller of goods, in themselves innocent, become a conspirator with (or what is, in substance, the same thing, an abettor) the buyer because he knows that the buyer means to use the goods to commit a crime";

b) Should the purveyor of information regarding chemical formulas, in themselves innocent, become a conspirator with the receiver of such information because he has reason to believe that the receiver will utilize the information in an illegal manner;

c) Should the Defendant be convicted of being a conspirator because he either sells goods, of themselves innocent, or purveys information, of itself innocent, or both, when the evidence taken in the light most favorable to the Government would show this to be his involvement.

STATEMENT OF THE CASE

Daniel H. George, Jr., was indicted by Grand Jury for an alleged conspiracy to violate Sections 812, 841 of Title 21, U.S.C., to wit: Knowingly and intentionally manufacturing controlled substances. Further, Defendant was indicted on five counts of violating the substantive crime of manufacturing, distributing or possessing, with the intent to distribute, controlled substances in violation of Section 841, Title 21 and Section 2, Title, U.S.C. The crimes allegedly occurred on a continuing basis from January 1, 1971 through and including January 14, 1976.

The case came on for trial by jury on June 8, 1976 in the Federal District Court, District of Vermont at Burlington, Vermont. Said trial resulted, on June 18, 1976, in a verdict of guilty against the Defendant on one count of conspiracy, and through the "Pinkerton" theory, on five counts of the substantive crime. The Motion for Acquittal at the end of the Government's case, and renewed at the close of all the evidence, was denied by the trial court below. Notice of Appeal was filed on August 3, 1976.

STATEMENT OF FACTS

Alleged co-conspirators, Kenneth Lotfy and Jay Leavitt, formed a partnership for the sale and production of controlled substances beginning in the Fall of 1971. (T. 342) At first, the relationship consisted of a mutual purchase and

resale relationship both in the United States and Canada, where the profits were shared between Lotfy and Leavitt on a fifty-fifty or one-third/two-thirds basis. (T.345) Their continuing partnership included alleged co-conspirators Robert Melsard, Douglas Russell, Marilyn Sweeney and Gary Leavitt, and continued through the latter part of 1973. (T.343-347) After the source in Canada "dried up" in late 1973, Leavitt and Lotfy contacted another alleged co-conspirator, Michael Prebble (T.248), who apparently did certain distilling operations for the manufacture of amphetamines.

After Prebble was arrested, Leavitt and Lotfy set up a new relationship with one, Peter Amero, and Lynwood Lamare. The relationship was a three-way split among Leavitt, Lotfy and Lamare, the chemist, on the profits of the amphetamine sold. (T.464-465) Lamare was actually to synthesize the methadrine. (T.464-465) It then came to the attention of Lotfy and Leavitt that Defendant George was supplying chemicals and equipment to Peter Amero and they arranged to meet Defendant George, personally, through Mr. Amero.

Defendant George was a chemistry tutor, teaching chemistry, and supplying innocent chemicals and equipment was his occupation. (T.688, 704, 747-748) No evidence was introduced that any chemical or piece of equipment which Defendant George either bought or sold was either illegal, in and of

itself, or a controlled substance. Lotfy's testimony indicates that he and Leavitt met with Defendant George and Defendant George gave Lotfy certain chemical procedures (see Government's Exhibit "23A", "23B" and "23C") and thereafter continued to supply Lotfy with chemicals and equipment, on demand, from that point until the time of the indictment. During this period Defendant George received between $20,000 and $30,000 to purchase chemicals and equipment (T.475-476), while never supplying controlled substances. (T.475-476)

During the period of association between Leavitt and Lotfy, they combined to deal with some 325 pounds of amphetamines, selling at a street price of some $5,000 per pound (T.528), 529, 410), making in excess of $1,600,000.

At no time did Defendant George share in the profits of the venture between Lotfy and Leavitt as had previously been arranged with Lynwood Lamare. (T.488-489)

SHOULD THE JUDGMENT OF THE DISTRICT COURT BE REVERSED AND JUDGMENT ENTERED FOR THE DEFENDANT IN THAT THE DISTRICT COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL MADE AT THE CLOSE OF THE GOVERNMENT'S CASE AND RENEWED AT THE CLOSE OF ALL THE EVIDENCE.

A. SHOULD THE SELLER OF GOODS IN THEMSELVES INNOCENT BECOME A CONSPIRATOR WITH (OR WHAT IS, IN SUBSTANCE, THE SAME THING, AN ABETTOR) THE BUYER BECAUSE HE KNOWS THAT THE BUYER MEANS TO USE THE GOODS TO COMMIT A CRIME.

The principal defense of the Defendant on trial contained three basic elements:

1. That the goods and chemical procedures which Defendant sold to Lotfy and Leavitt were innocent, in and of themselves, and at no time did he manufacture, buy or sell a controlled substance.

2. Even though Defendant George may have known that the chemicals, equipment and chemical procedures may have been used illegally, he had no knowledge, per se, of a conspiracy, and had no direct involvement in the manufacture of the controlled substances, or their subsequent sale, nor did he share in the profits of any illicit sales.

3. Defendant George believed he was acting legally and did not intend to conspire or violate the law in any manner.

With the principal defense in mind, it becomes necessary to examine this Court's position over the last thirty-seven years. The principal and initial case in the Second Circuit is United States v. Falcone, 109 F2d 579 (1940), Affirmed 311 U.S. 205. Here the convictions of the Falcone brothers, the Nole brothers and one, Alberico, were reversed on substantially similar facts as the instant case. In varying relationships, the Falcone brothers, the Nole brothers and Alberico sold large quantities of bagged sugar, five-gallon cans, and yeast to a group of men who were distilling alcohol.

> "In the light of all this, it is apparent that the first question is whether the seller of goods, in themselves innocent, becomes a conspirator with - or, what is in substance the same thing, an abettor of - the buyer, because he knows that the buyer means to use the goods to commit a crime."
>
> United States v. Falcone 109 F2d 579 at 581.

In Falcone, the Court resolved in favor of the Defendants on the above stated issue, concluding that the seller's knowledge was not alone enough. The Court, in Falcone, reasoned as follows at P. 581, in the most famous language of the case:

> "There are indeed instances of criminal liability of the same kind, where the law imposes punishment merely because the accused did not forbear to do that from which the wrong was likely to follow; but in prosecutions for conspiracy or abetting, his attitude towards the forbidden undertaking

> must be more positive. It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that other will make an unlawful use; he must in some sense promote their venture himself, make it his own, have a stake in its outcome. The distinction is especially important today when so many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders." (Emphasis added)

Since the decision in Falcone, this Court has had an opportunity to see factual situations from time to time where it has been urged to reverse lower court convictions based on the invocation of a Falcone rationale. The Falcone decision has also been noted in several Law Review articles, the most comprehensive of which is Falcone Revisited; The Criminality Of Sales To An Illegal Enterprise, Columbia Law Review, Vol. 53 II February 1953, Pages 228-242.

In the cases that have followed Falcone, this Circuit has already delineated some areas where fact situations may be readily distinguished from the holding in Falcone. One area that is clearly defined is that the items which are sold by the alleged conspirator must be of an innocent nature. This Court, in United States v. Rich, 262 F2d 415, where the conspirators actually sold narcotics; United States v. Tramaglino, 197 F2d 928, where the sale was of marijuana and United States v. Campisi, 306 F2d 308, where the subject of the sale was stolen bonds, themselves not innocent, has

clearly stated that the rationale in Falcone will not apply to reversing convictions of conspirators who sell goods that are of themselves illegal, controlled, or contraband.

In the instant case, the Government's chief witness with regard to Defendant George, one Kenneth Lotfy, testified that at no time did Defendant George ever sell controlled substances (T.475-76). In fact, with all the testimony of Kenneth Lotfy, various Federal Agents and four chemical and chemical supply people, there is not a single scrap of evidence which would in any way tend to indicate that Defendant George had ever bought or sold a chemical, which was a controlled substance, or piece of equipment which was illegal. See testimony of Paul Reuter, Lloyd Arseneault, Paul Joseph Bresnahan and William D'Piano (T.667-668).

Another clearly distinguishable situation that the Second Circuit has ruled on in United States v. Simonds, 148 F2d 177, is where the seller takes the initiative in bringing about the sale. Other Circuits, see Bartoli v. United States, 192 F2d 130, and the Supreme Court in Direct Sales Co. v. United States, 319 U.S. 703, have taken similar positions in that the seller, when he takes the initiative in bringing about the sale, or encourages the conspirators to buy, significantly alters his relationship with buyer and under those circumstances is distinguishable from Falcone.

In Direct Sales Co. the Supreme Court, at approximately the same time period, but subsequent to Falcone, affirmed the conviction of the corporation for conspiracy to violate the Harrison Narcotics Act. Petitioners in Direct Sales Co. not only had a long-standing relationship with Dr. Tate, where the company was supplying large quantities of morphine sulphate, a restricted drug at that time, but the Court found that the advertising and encouragement provided by Direct Sales Co. distinguished the fact situation sufficiently from Falcone to affirm the conviction.

Defendant George never took the initiative in bringing about the sale of any chemicals or chemical supplies as the defendants did in the above-referenced cases. In fact, the testimony of Kenneth Lotfy on Page 350 of the Transcript indicates that Lotfy and Leavitt specifically sought out Mr. George in order to purchase the chemicals and equipment from him.

Yet another exception to the Falcone directive is United States v. Piampiano, 271 F2d 273, where the defendant deviated from his normal vegetable business to sell large quantities of sugar to an illicit liquor manufacturer and further, tried to hide the sale of that sugar. Piampiano was making an extra effort to supply sugar not in the regular course of his business. There is no evidence from the Transcript that Defendant George was anything but a chemistry

tutor and supplier of chemicals and equipment (T.688, 704. 747-748).

Other cases in this Circuit indicate that a factual variance to Falcone will be upheld if the defendant actually participated in the making of illegal whiskey, United States v. Pandolfi et al, 110 F2d 736; participated in the actual substantive crime by actually stealing motor vehicles, United States v. D'Ercole, 225 F2d 611; or as in United States v. Perez, 242 F2d 867, where the defendant participated in, and drove the car for, the purchase and sale of an illegal narcotic. In the case below, it is clear that Defendant George did not participate in the actual production of amphetamine or methamphetamine. This was confirmed on numerous occasions by Kenneth Lotfy, the Government's main witness against Mr. George (T.478).

Another way in which cases have been distinguished from Falcone is through the discussion of excess profits, if any, that the defendant may have made upon the sale of goods to the conspiracy. This Court has spoken of excess profits in cases cited above, and the Supreme Court dealt with it in Direct Sales Co., supra. There is very scant testimony as to what Defendant George might have been charging for chemicals and chemistry equipment. However, there is one reference in the Transcript of Kenneth Lotfy's testimony at Page 554, where he compares the prices that were being charged by Defendant

George in 1974 to the prices in a chemical equipment catalogue issued in 1970. Lotfy indicated that the differential in price was an increase of 300% to 400%. Notwithstanding that testimony, it is the uncontroverted testimony that Jay Leavitt and Kenneth Lotfy combined to manufacture and sell some 325 pounds of amphetamine, making a gross profit in excess of $1,600,000 (T.410-411, 528-529); that at no time did Defendant George share in the profits (T.488-489). Further, it was the contention of the Government that Defendant George was the main supplier of chemicals and equipment for Lotfy and Leavitt; however, during the two-year period when Defendant George was supplying chemicals and equipment, he received between $20,000 and $30,000 (T.474-475) towards the purchase of equipment and chemicals, This figure, of course, was the total money handed to Defendant George, not the profit on the items sold. If one were to believe the higher figure of $30,000 when compared to $1,600,000 made by Lotfy and Leavitt, it clearly shows that there was not an excess profit made by Defendant George, especially when one considers that $30,000 is 1.8% of $1,600,000. Further, it reinforces the concept that Defendant George did not have a "stake in the venture" by sharing the profits of the conspiracy between Leavitt and Lotfy.

The "stake in the venture" test is another area in

which this Court has attempted to delineate and explain the decision in Falcone. The Harvard Law Review, Vol. 72, No. 6, at Page 932 supports the Court by saying:

> "The stake in the venture test remains the clearest way of finding a real desire for the object of a conspiracy and, a fortiori, the intent of that object necessary for criminal liability."

Justice Hand in United States v. Di Re, 159 F2d 818, Aff'd. 332 U.S. 581, well after the decision in Falcone, said at Page 819 -

> "We have several times had occasion to consider what relation to a conspiracy makes a man a confederate, and what relation to the principals in a crime makes a man an abettor; and we have uniformly held that the prosecution must prove the accused to have associated himself with the principals in the sense that he has a stake in the success of the venture."

Justice Hand took a similar position regarding the "fruits of their theft" in a conspiracy case regarding the theft of gasoline ration books and the alleged conspiracy to convert them, United States v. Zueli, 137 F2d 845.

Again, it cannot be shown in any evidence from the trial below that Defendant George had a stake in the venture. In fact, clearly the reverse is true. Previous to any contact with Defendant George, Kenneth Lotfy and Jay Leavitt had always shared the profits, either equally or at a 1/3 to 2/3 ratio, except when dealing with Lynwood Lamare. When dealing

with Mr. Lamare, who actually engaged in the process of manufacturing methamphetamine, Lamare, Lotfy and Leavitt split the "stake" on a 1/3 basis. When Lotfy approached Defendant George and requested to purchase chemicals and equipment, Lotfy specifically paid George in advance. Lotfy further stated that at no time did Defendant George share the profits (T.488-489).

It is clear that within the framework of this Court's original decision in Falcone, and subsequent explanatory decisions, that the doctrine in Falcone should be invoked in the instant case. The goods sold by Defendant George were, of themselves, innocent, not otherwise illegal or controlled. Lotfy and Leavitt sought out Defendant George for the purchase of these goods and Defendant George never took the initiative in bringing about the sale of any chemicals or supplies. It was within the regular course of Defendant George's business that he supplied the materiel to Lotfy and Leavitt. Defendant George never participated in the substantive crime, i.e. the manufacture or sale of a controlled substance. There is no indication that Defendant George received excess profits in any sale, and it is clear that he did not share or have a stake in the venture.

SHOULD THE PURVEYOR OF INFORMATION REGARDING CHEMICAL FORMULAE, IN THEMSELVES INNOCENT, BECOME A CONSPIRATOR WITH THE RECEIVER OF SUCH INFORMATION BECAUSE HE HAS REASON TO BELIEVE THAT THE RECEIVER WILL UTILIZE THE INFORMATION IN AN ILLEGAL MANNER.

Throughout the trial below there is a plethora of evidence regarding Government's Exhibits 22, 23A, 23B and 23C. These four Exhibits, according to Kenneth Lotfy's testimony (T.354-355) were chemical formulae which Defendant George dictated to Mr. Lotfy and Mr. Lotfy, at a later time, in his own handwriting or by typing them himself, put the oral dictation in the form existing now as Government's 22, 23A, 23B and 23C.

Even if the jury believed Mr. Lotfy's testimony relative to the oral dictation and the subsequent transcribing, the evidence clearly shows that the chemical formulae and procedures explicit in Government's 22, 23A, 23B and 23C are innocent in and of themselves, and their use to further the objectives of the conspiracy would depend upon the intent of the user.

The Government put on chemist Anthony Fonseca. His qualifications were undisputed, with some 18 years experience as an analytical chemist with the United States Custom's Agency, United States Food and Drug Administration

and for the last six years, with the Drug Enforcement Administration (T.749-751).

During cross-examination (T.781-785) Mr. Fonseca indicated that there were certain letter values within the chemical procedure outlined on Government's 22, 23A, 23B and 23C, which stood for unknown chemical reactives. For example, "RDB", "RDC", "RDA" stood for certain unknown chemicals within the procedure outlined on the Government's Exhibits.

Mr. Fonseca, upon direct examination, identified Government's 22 as a procedure for making amphetamine or methamphetamine, also Government's 23A, and further went on to identify the last two Government Exhibits in this regard as a chemical procedure for the synthesization of P2P and some procedural notes. On cross-examination, however, Mr. Fonseca indicated that there was no way of knowing by looking at the formula or procedure outlined on Government's 22, 23A, 23B, and 23C, what chemicals were to be substituted in the spaces indicated by RDB, RDC, or RDA. He further indicated that there were a large number of amines, many of which are not controlled substances, and that the procedure in 22, 23A, 23B and 23C was a procedure for developing amines or to make amine derivatives. He further testified that you could make amines other than amphetamine and methamphetamine by using any number of different chemicals

within the formula depicted in 23A, 23B and 23C (T.783-785).

At a later time in cross-examination (T.789-791), he indicated that the procedure outlined in 23A, 23B and 23C is the Leuckart Reaction, so-called, a standard reaction in all chemistry textbooks. The colloquy went as follows:

"Q (By Mr. Cleveland) Mr. Fonseca, could you tell the Court and jury what a Leuckart Reaction is?

A. Leuckart Reaction is a reaction used to prepare amphetamine and methamphetamine and some other type derivatives.

Q Would it be fair to say the procedure outlined on these three pages, "23A, B, C" is an outline of a Leuckart Reaction?

A. That is correct.

Q Isn't the Leuckart Reaction a standard reaction in all chemistry textbooks?

A. Well, basically, yes, sir.

Q And can't it be used for many, many other things other than making amphetamine and methamphetamine?

A. Other than methamphetamine, yes.

Q Doesn't it really depend on in whose hands this formula is in and what chemicals are plugged in before you find out whether or not they are making something illegal?

A. That is what I was trying to say before.

Q It depends on the intent of the person who has this as to whether or not this, in fact, can be used illegally?

A. Yes, sir.

Q Isn't it true in the Leuckart Reaction phenyl 2 butnone can be used to be substituted for these different RD As, Bs, and Cs?

A. Yes, sir.

Q And come out with a legal amine?

A. Yes, sir.

Q And how about phenyl 2 pentnone, would that also be a perfectly legal amine.

A. I would believe so.

Q How about phenyl 2 hexnone?

A. It depends. I could say what you are doing is substituting for P2P and ketone?

Q That is correct.

A. I would think so. I am not--I would think so.

Q How about phenyl 2 oxnone?

A. You can go right up the scale.

Q Yes, sir, isn't it true there are many, many, many things that can be substituted for what is here RDB, RDA and come out with this procedure and come out with a perfectly legal amine?

A. Yes, sir.

Q So it is totally dependent on who uses this procedure and

what things they plug into it as to whether it is illegal?
A. Yes, sir."

The Government's expert witness confirmed that whatever formula or procedure Defendant George may have given to Kenneth Lotfy, the formula, or procedure, is one that does not specifically outline which chemicals should be used and merely outlines a general reaction. Further, any number of chemicals may be used within the formula to produce any number of final products, some of which may be controlled, others perfectly legal. It depends on what chemicals are used in the formula as to what product is finally resultant therefrom. It depends entirely upon the intent of the user. Under cross-examination, Mr. Lotfy further confirmed both Mr. Fonseca's statement regarding intent, and clearly showed that Defendant George intended only to pass on a fully legal formula, leaving the use or abuse of it solely within the control of Lotfy.

"Q Let me read you some testimony from the Grand Jury.

'Q. What was the reason to give oral dictation in preference to typing it out himself?

A. He was only tutoring me in chemistry. What I then did was up to me whether I used it illegally or legally.'

Q Was that an accurate statement of your Grand Jury testimony?

A. That was an accurate statement for me and that was his answer.

Q Wasn't that consistently his answer?

A. That was consistently his answer, yes (T.498).

At a later time in the trial during Defendant George's case, Dr. George C. Crooks, a professor emeritus at the University of Vermont and chemistry consultant for over forty years, testified. Dr. Crooks testified at some length that the formulae and procedures for making amphetamine and methamphetamine were readily available in the public libraries, school libraries and even in retail stores. Beyond that, Dr. Crooks testified (T.965-974) when teaching a formula for making amines to a college class or to anyone, as demonstrated on the blackboard of the courtroom, that as a normal procedure he would substitute the capital letter "R", meaning radical, for certain chemical compounds in the formula. The reason he would make such a substitution when teaching a formula is that the end product would vary as the substitution of different compounds or chemicals in the place of the radical "R" would vary. His purpo then would be teaching the principle and not necessarily teaching how to make a particular product.

Subsequently, when Dr. Crooks was cross-examined by the Government, he disclosed that the substitution of phenol 2

butanone or phenol 2 oxinone or any number of other chemicals for the radical "R" would produce a final product which was an amine, but not controlled as in the case of amphetamine or methamphetamine. It is clear that in the testimony of both the expert witnesses in the trial, on direct examination and cross-examination, the Government's Exhibits 22, 23A, 23B, 23C are nothing more than an outline of the Leuckart reaction, so-called, a reaction designed to chemically produce amines of all types. Further, the formulation on Government's 22, 23A, 23B and 23C was one of the general nature and did not in any way describe a process limited to the production of amphetamine or methamphetamine. Both Dr. Crooks and Mr. Fonseca indicated that the product resultant from the Leuckart reaction depended entirely upon what chemicals were used for the unknown values of the formula. Consequently, if a variety of chemicals were used as the substitute for R or RDA or RDB or RDC, the result would be a perfectly legal amine. However, if some other chemicals were used in those places in the formula, perhaps a controlled substance would be manufactured.

It is abundantly clear that the abuse of any formulations or procedures introduced by the Government in this case to further the conspiracy, were entirely dependant upon the user of such formulae and procedures. It is equally clear that at no time did Defendant George participate in

the manufacture of the controlled substance. This has been established time and time again, by the Government's chief witness himself. Where the procedure given by Defendant George to Mr. Lotfy was innocent in and of itself, and the use of the information entirely dependent upon the intent of Mr. Lotfy, Defendant George's act or sales should not be considered an act in furtherance of the conspiracy.

Certain it is that the dissemination of public information regarding formulae, procedures and step-by-step process for making amphetamine, methamphetamine or a variety of other controlled sutstances, are available over the counter in retail stores. Dr. Crooks himself, at counsel's request, purchased such a book and it is introduced as evidence in this case as Defendant's Exhibit E. Certainly these pamphlets and books sold at retail stores are sold for consideration and with the knowledge that the production of amphetamine and methamphetamine is illegal. Similarly the sale of books on how to win at blackjack are written and sold for consideration while the author knows that gaming is not legal in all places where the books will be sold. For some years now, popular science journals have had the formula for making your own atom bomb contained within them. It would seem correct that the dissemination of information for consideration explaining how to do something illegal is not, in and of itself, enough to be considered a furtherance of the conspiracy to commit

that illegal act.

In the instant case, the Defendant George disseminated for consideration certain formulae and procedures regarding organic chemistry. There is no indication that the formulae or procedures are limited to the making of amphetamine or methamphetamine. In fact, the opposite is true. There is overwhelming evidence that the formulae could be used for any number of purposes, both legal and illegal. And further, it is clear that it is the user of the formula that initiates the decision whether its application will be a legal one or an illegal one.

Whereas, in the instant case, a seller of chemicals, chemical supplies and formulae, all innocent in and of themselves, knows that the chemicals, supplies and formulae may be used in illegal activity. Knowledge of that fact does not prove knowledge of a conspiracy, nor are his acts sufficient to involve him in the conspiracy.

CONCLUSION

By reason of the errors above cited, the judgment of the United States District Court for the District of Vermont should be reversed. Judgment should be entered for the Defendant on the grounds that the District Court should have

granted Defendant's Motion for Judgment of Acquittal at the close of the Government's case, and renewed at the close of all the evidence.

Peter M. Cleveland, Esq.
Attorney for Daniel H. George, Jr.
Defendant - Appellant

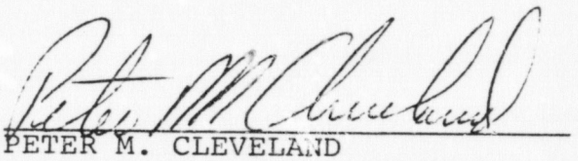
UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee	)	
v.	)	Docket No. 76-1381
DANIEL H. GEORGE, JR., Defendant-Appellant	)	

CERTIFICATE OF SERVICE

I do hereby certify that on the 1st day of February, 1977, I made service of the BRIEF FOR THE APPELLANT upon the UNITED STATES OF AMERICA, by mailing two copies of the same to its attorney of record, George W. F. Cook, United States Attorney, Federal Courthouse, Rutland, Vermont.



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